Top Job Building Maintenance Co., Inc. *and* Local 254, Service Employees International Union, AFL–CIO. Cases 1–CA–25989–1, 1–CA–26140, 1–CA–26261, and 1–CA–26321

August 27, 1991

DECISION AND ORDER

BY MEMBERS CRACRAFT, DEVANEY, AND OVIATT

On November 13, 1990, Administrative Law Judge Claude R. Wolfe issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in support of the judge's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order as modified.[3]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below, and orders that the Respondent, Top Job Building Maintenance Co., Inc., New Bedford, Massachusetts, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(c).

''(c) On request, bargain collectively with the Union concerning the effects of the reduction of daily work hours from 4 to 3-1/2, effective in January 1989, and reduce to writing any agreement reached as a result of such bargaining.''

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we have violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to recognize and bargain with Local 254, Service Employees International Union, AFL–CIO as the exclusive bargaining representative of the employees in the following bargaining units:

All employees who regularly work in excess of 15 hours per week engaged in the contract building cleaning industry at Respondent's 565 Technology Square, Cambridge, Massachusetts location, including all janitors, porters, cleaners, doormen, elevator operators, starters, handymen, groundsmen and maintenance tradesmen not represented by another union, but excluding sales employees, office clerical employees, foremen and all other supervisors as defined in the Act.

All employees who regularly work in excess of 15 hours per week engaged in the contract building cleaning industry at Respondent's 575 Technology Square, Cambridge, Massachusetts location, including all janitors, porters, cleaners, doormen, elevator operators, starters, handymen, groundsmen and maintenance tradesmen not represented by another union, but excluding sales employees, office clerical employees, foremen and all other supervisors as defined in the Act.

All employees who regularly work in excess of 15 hours per week engaged in the contract building cleaning industry at Respondent's 38 Henry Street, Cambridge, Massachusetts location, including all janitors, porters, cleaners, doormen, elevator operators, starters, handymen, groundsmen and maintenance tradesmen not represented by another union, but excluding sales employees, office cleri-

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We note that the correct citation to *Chambersburg County Market* is 293 NLRB 654 (1989).

[2] In view of our agreement with the judge's conclusion that the Respondent withdrew recognition from and refused to bargain with the Union before a reasonable time for bargaining had elapsed, we find it unnecessary to pass on the judge's alternative discussion as to whether the Respondent had a good-faith doubt of the Union's majority status. *Royal Coach Lines*, 282 NLRB 1037, 1038 (1987); *VIP Limousine*, 276 NLRB 871 fn. 1 (1985).

[3] The Respondent excepts, inter alia, to the judge's make-whole remedy for the Respondent's failure to give the Union notice of and an opportunity to bargain over the effects of the reduction of hours, contending that this remedy is inappropriate because the Respondent had no control over the schedule change. We note that, as the judge found, the change was mandated by the manager of the building, not the Respondent which had no control over the change and was required to implement it, and the implementation of the change itself was not alleged as a violation of the Act. We therefore find merit in the Respondent's exception and shall modify the judge's Order to provide only that the Respondent bargain with the Union, on request, over the effects of the reduction in hours.

cal employees, foremen and all other supervisors as defined in the Act.

All employees who regularly work in excess of 15 hours per week engaged in the contract building cleaning industry at Respondent's 21 Osborn Street, Cambridge, Massachusetts location, including all janitors, porters, cleaners, doormen, elevator operators, starters, handymen, groundsmen and maintenance tradesmen not represented by another union, but excluding sales employees, office clerical employees, foremen and all other supervisors as defined in the Act.

WE WILL NOT seek to decertify the Union as the exclusive representative of these employees in order to avoid our bargaining obligation.

WE WILL NOT fail or refuse to furnish the Union with information it requests that is relevant and reasonably necessary to fulfilling its duty to represent the employees in the units described above.

WE WILL NOT fail to give the Union prior notice of and an opportunity to bargain on the effects of changes in the hours of work.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the National Labor Relations Act.

WE WILL, on request, recognize and bargain with Local 254, Service Employees International Union, AFL–CIO as the exclusive representative of all employees in the above-described appropriate units and, if an understanding is reached, embody such understanding in a written, signed agreement.

WE WILL furnish to Local 254 the information it requested by letters of December 8, 1988, and March 31, 1989.

WE WILL, on request, bargain collectively with Local 254 concerning the effects of the reduction of daily work hours from 4 to 3-1/2, effective in January 1989.

TOP JOB BUILDING MAINTENANCE CO., INC.

Beth Anne Wolfson, Esq. and *Kevin Murray, Esq.*, for the General Counsel.

David S. Barnet, Esq., for Top Job Building Maintenance Co.

Donald Coleman, Business Agent, Local 254, Service Employees International Union, AFL–CIO.

DECISION

STATEMENT OF THE CASE

CLAUDE R. WOLFE, Administrative Law Judge. This proceeding was litigated before me at Boston, Massachusetts, on June 20 and 21, 1990, pursuant to various charges filed and served and a second consolidated complaint amended at hearing and alleging Top Job Building Maintenance Co., Inc. (Respondent) has violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act) in various ways. Respondent denies the commission of unfair labor practices.

On the record[1] before me, and after considering the comparative testimonial demeanor of the various witnesses and able posttrial briefs filed by the parties, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is a corporation with office and place of business in New Bedford, Massachusetts, and various other work locations, and is in the business of furnishing contract cleaning services. Respondent annually, in the course of these business operations, provides services valued in excess of $50,000 to Spaulding & Slye, Inc. and Polaroid Corporation, both business enterprises located in Massachusetts and directly engaged in interstate commerce. Respondent annually, in the course of its business operations, purchases and receives products, goods, and materials valued in excess of $50,000 at its Massachusetts locations which are delivered directly to the locations from points located outside the Commonwealth of Massachusetts. Respondent is, and has been at all times material to this proceeding, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

Local 254, Service Employees International Union, AFL–CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

III. SUPERVISORS AND AGENTS

The complaint alleges, Respondent admits, and I find that at all times material to this proceeding the following named persons have occupied the positions set forth opposite their respective names, and are now, and have been at all times material to this proceeding, supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Albert Rebeiro	President
Clay Forney	General Manager
George Ramos	Manager

The complaint further alleges, and Respondent denies, that Barbara Kaufman is a supervisor and agent of Respondent within the meaning of Section 2(11) and (13) of the Act. The burden therefore rests on General Counsel to prove his contention.[2] The indicia of supervisory status are clearly spelled out in Section 2(11) of the Act as follows:

> The term ''supervisor'' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively

[1] General Counsel's motion to correct the transcript of proceedings in several particulars is granted except for the requested correction at p. 86, L. 17 which is denied.

[2] *Staco, Inc.*, 244 NLRB 461 (1979).

> to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The possession of any one of the functions so enumerated is sufficient to establish supervisory authority. See, e.g., *Opelika Foundry*, 281 NLRB 897, 899 (1986).

The evidence presented is by no means overwhelming on either side of the issue. Kaufman was not called as a witness, and her testimony may have and probably would have been very helpful in determining her status. I draw no adverse inference against either party for failing to call her because there is no showing she was not equally available to either side, and neither party was under any obligation to call her as a witness. Returning to the evidence, it indicates Kaufman may have the authority to hire, assign, or responsibly direct on the basis of her independent judgment. Accordingly, these possibilities must be explored.

The specifications from which Respondent developed its bid for the cleaning contract for the building occupied by Polaroid Corporation at 565 Technology Square, Cambridge, Massachusetts (the 565 building) where Kaufman worked at the times relevant to this proceeding, contain a requirement for an ''On-site Supervisor''—''who is permanently assigned to the building. His duties include scheduling tasks to be performed in accordance with the specifications and inspecting the building while the work is being performed.'' The proposal submitted by Respondent on April 27, 1988, to supply janitorial services in the 565 building notes that a supervisor will be paid $6.50 per hour and other employees will receive $6. The parties agree Kaufman was paid $6.50 and the other employees with whom she worked were paid $6 after Respondent was awarded the contract in September 1988. She had a key to the building entrance, and a key to a storage area wherein cleaning supplies were stored. Kaufman was required to report to the building one-half hour before the other employees so that she might unlock the storage closet and the entrance door before other employees arrived. When the others arrived they were required to sign in, as did Kaufman, at a guard post staffed by a security service employed by Polaroid. As the other employees signed in, Kaufman was required to verify their identity to the guard and issue them badges to be worn during their shift and returned to Kaufman at shift's end. The sign-in log carries the printed notation ''Signatures verified by'' followed by the signature of Kaufman. She also signs her name in the signature space following her printed name which is preceded by the printed designation ''Supervisor.''

The 565 building is a nine story edifice. Respondent's employees at that location, apparently 22 or 23 in number including Kaufman, are assigned to cleaning duties on the various floors. This means several different floors, if not all nine, have employees of Respondent assigned to them simultaneously. According to Clay Forney, Respondent's general manager at the time of the events with which this proceeding is concerned, employees were assigned to clean specific floors and would routinely return to them each day. This seems likely, is not disputed, and is credited. Forney further testified that Kaufman would daily go from floor to floor, make sure other employees were doing what they should be doing, and was responsible for instructing them to correct deficiencies in their cleaning. Former Operations Manager George Ramos recalls that leadpersons, specifically including Kaufman, faced with a shortage of employees could and did reassign employees to different floors without need of prior consultation with him. In this connection, former employee Juan Meija who was employed for less than a month in 1988 remembers Kaufman instructed him on what to do each night, and directed him to call her if he was absent due to illness. Although both Ramos and Forney testify they visited the buildings a few times a week, Kaufman was the only employee of Respondent remotely resembling a supervisor who was present throughout the shift every day.

The mere fact Kaufman was designated ''Supervisor'' on the above-mentioned documents does not establish she was a statutory supervisor. *Waterbed World*, 286 NLRB 425, 426 (1987). Moreover, although she may have possessed the independent authority to assign and/or responsibly direct employees, the evidence presented is insufficient to warrant such a finding. All the record shows is that the employees performed repetitive work night after night on the same floors in the same way, Kaufman inspected their work and pointed out, as any more experienced employee might have done, what needed correcting, and Kaufman occasionally had to send an employee from one task to another as required by the absence of other employees. The inspection of work and advice to reclean, as well as the identifying of employees, handing out and retrieving identification badges, and passing out paychecks, are routine activities without any need for the exercise of independent judgment of the type contemplated by the Act. Similarly, the reassignments of employees were dictated by the absence of employees and the work to be done, required no real independent judgment, and do not rise to the level of responsible direction or assignment required by the Act.

Manuel Vila testified that he went to the 565 building in December 1988 looking for a job. The guard referred him to Barbara. Vila does not give her last name, but I conclude it was Kaufman to whom he spoke. Vila asked if she had any openings. She offered him work for 3 nights. He declined the offer because he needed a 40-hour-a-week job. Vila left his name and telephone number with Kaufman, and she promised to call him if she needed him. This testimony is uncontroverted and credited.

Juan Meija testified he secured an application to work for Top Job from Kaufman on August 31, 1988, at the 565 building, and he had worked under her supervision for Crystal Industrial Maintenance which preceded Respondent as cleaning contractor at the building. He was subsequently hired by Kaufman on September 13, 1988, and directed to perform the same work on the same floor as he had for Crystal. He did so. When he later gave notice in October that he was leaving, Kaufman told him he could return to his job with Respondent anytime he wanted to by just reporting to her. Meija's testimony is uncontroverted, there was nothing in his testimony or his demeanor to indicate he was not being entirely truthful, and he is credited.

From Vila and Meija we learn that Kaufman offered Vila 3 days' work, whether this was only for 3 days or for continuous employment 3 days a week is irrelevant, and Kaufman took Meija's application and hired him. In the case of Vila the evidence indicates the offer from Kaufman was made without prior consultation with anyone. It is of course pos-

sible she had prior instructions to make such an offer to any applicant, but there is no evidence that she did. The offer, under the circumstances credibly related by Vila, prima facie implies the authority to hire on the basis of independent judgment without resort to consultation with Kaufman's superior. With respect to Meija, there is no evidence anyone but Kaufman considered his application before hiring him. The testimony of George Ramos and Clay Forney to the effect that Kaufman had no authority to exercise independent judgment in hiring, and, further, that all applications were reviewed and all applicants interviewed by them rather than Kaufman, and that they and Respondent's president made all the decisions to hire is not particularly persuasive. Neither of them interviewed Meija, nor did Respondent's president. There is no evidence anyone but Kaufman reviewed Meija's application or took part in the decision to hire him. Here, as in Vila's case, General Counsel has shown prima facie that Kaufman could and did exercise her independent judgment. Respondent has not rebutted that prima facie showing. I therefore conclude the evidence preponderates in favor of a conclusion that Kaufman had the authority in the interest of the employer to hire employees on the basis of her independent judgment and was, therefore, at all times material a supervisor within the meaning of Section 2(11) of the Act.

IV. THE ALLEGED UNFAIR LABOR PRACTICES[3]

A. *General Chronology*

The complaint alleges, Respondent admits, and I find that Respondent recognized the Union, by letter of October 11, 1988, as the designated exclusive collective-bargaining representative of Respondent's employees in the following units appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> (a) All employees who regularly work in excess of 15 hours per week engaged in the contract building cleaning industry at Respondent's 565 Technology Square, Cambridge, Massachusetts location, including all janitors, porters, cleaners, doormen, elevator operators, starters, handymen, groundsmen and maintenance tradesmen not represented by another union, but excluding sales employees, office clerical employees, foremen and all other supervisors as defined in the Act.
>
> (b) All employees who regularly work in excess of 15 hours per week engaged in the contract building cleaning industry at Respondent's 575 Technology Square, Cambridge, Massachusetts location, including all janitors, porters, cleaners, doormen, elevator operators, starters, handymen, groundsmen and maintenance tradesmen not represented by another union, but excluding sales employees, office clerical employees, foremen and all other supervisors as defined in the Act.
>
> (c) All employees who regularly work in excess of 15 hours per week engaged in the contract building cleaning industry at Respondent's 38 Henry Street, Cambridge, Massachusetts location, including all janitors, porters, cleaners, doormen, elevator operators, starters, handymen, groundsmen and maintenance tradesmen not represented by another union, but excluding sales employees, office clerical employees, foremen and all other supervisors as defined in the Act.
>
> (d) All employees who regularly work in excess of 15 hours per week engaged in the contract building cleaning industry at Respondent's 21 Osborn Street, Cambridge, Massachusetts location, including all janitors, porters, cleaners, doormen, elevator operators, starters, handymen, groundsmen and maintenance tradesmen not represented by another union, but excluding sales employees, office clerical employees, foremen and all other supervisors as defined in the Act.

Respondent had commenced its work as the cleaning contractor at these locations in early September 1988. Most, if not all, of its employees had previously performed the same duties for Crystal Industrial Maintenance at the same locations, and were members of the Union.

Subsequent to its recognition of the Union, Respondent, by Gerald Franklin, its attorney, met with Donald Coleman, the Union's business agent, for the purpose of negotiating a collective-bargaining agreement. The first meeting took place on October 18, 1988. Prior to this meeting, Coleman had sent and Franklin had received a letter confirming the meeting. Attached to the letter was a copy of the Union's master agreement for maintenance contractors during the period September 1, 1987, to August 31, 1990. Thus far, Franklin and Coleman agree, but their accounts of what transpired during their meetings commencing October 18 sharply differ. A synopsis of the testimony of each gentleman with respect to what took place during these meetings follows.

1. Testimony of Donald Coleman

On October 18, he and Franklin discussed the master agreement, agreed on some items, and disagreed on others. Franklin advised that Respondent had no paid vacations and paid for eight holidays per year. The Union requested 10. Franklin offered $6.20 per hour in wages, a 20-cent increase, with no future raises, and equal division of arbitration costs. He objected to the contract provision providing for an audit of Respondent's book in certain circumstances. Coleman suggested the date of hire for the purpose of vacation eligibility be the date of hire by Respondent. Franklin opined the parties were not far apart and they would just need a meeting with Albert Rebeiro, Respondent's president. During this meeting Franklin agreed Barbara Kaufman was a supervisor excluded from the Union. The next meeting was set for October 28.

Franklin and Coleman met on October 28. Rebeiro was not present. After they reviewed what had been said at the October 18 meeting, Coleman explained that under the Union's proposal Respondent could switch the dates of holidays to dates on which the Polaroid facilities might be closed. Franklin said another meeting should be scheduled with Rebeiro. The next meeting was scheduled for November 4.

[3] The findings of fact are based on the credible portions of testimony of the participants and documentary evidence received. I have considered all the testimony and other evidence of record. In those instances where conflicts in testimony arise I have considered the reasonable probabilities, the convincing character of the testimony, and comparative demeanor of opposing witnesses. I have credited parts of witnesses' testimony while not crediting other parts. This is neither unusual or improper. *NLRB v. Universal Camera Corp.*, 179 F.2d 749 (2d Cir. 1950); vacated on other grounds 340 U.S. 474 (1951). In those instances where I may not specifically state who is credited the recitation of facts will indicate who has been credited.

On November 4, he and Franklin met. Coleman believes nothing was discussed because Rebeiro was not present, and all he and Franklin did was schedule another meeting for November 11. This meeting and another scheduled for November 18 were canceled by Franklin because Rebeiro could not be present.

On December 5, Coleman and Franklin met again without Rebeiro. Coleman said it was an unfair labor practice for Respondent not to make counter offers. Franklin offered 10 cents an hour as a future wage increase, but made no offers on vacations or holidays. Coleman said that if Franklin's wage offer was serious he would report it to the union members. Franklin then called someone, and Coleman heard him say he had made the 10-cent wage offer and had agreed to set a meeting for December 22 with Rebeiro. After ending his call, Franklin withdrew the 10-cent offer, but agreed to meet on December 22. Franklin later canceled the December 22 meeting because the Union had filed a charge with the Board, and a decertification petition had been filed with the Board. No further meetings were held.

Leaving Coleman's testimony on negotiations, it is apropo at this point to note that the Union filed the original charge in Case 1–CA–25989–1 on December 9 alleging Respondent violated Section 8(a)(1), (3), and (5) of the Act by circulating and filing a decertification petition. A petition seeking to decertify the Union as the collective-bargaining representative of Respondent's employees in all four units set forth hereinabove was filed with the Board in Case 1–RD–1583 by Barbara Kaufman on December 5, 1988.

2. Gerald Franklin's Version

On October 18, he and Coleman compared a list of employees Coleman had with Respondent's computer list of employees, and checked off those who had been employees of Crystal. He did not tell Coleman that Respondent did not pay for vacations and only paid for eight holidays. No agreements were reached at that meeting. All they did was discuss who had worked for Crystal and some contract language concerning the audit clause and the unit descriptions. Coleman did not request any information that day. Holidays were not discussed until the third meeting. He never talked to Coleman about Kaufman and knew nothing of her except she may have been on the list of employees checked off.

About all that happened at the October 28 meeting was that they reviewed the agreement, he refused to agree with the auditing clause, and he insisted the collective-bargaining agreement specify the four units set forth above rather than statewide coverage of all Respondent's employees. Coleman made no request for information.

Holidays and vacation were discussed for the first time on November 4. He told Coleman that Respondent had paid holidays and employees had to be employed a year to be eligible for a vacation. Respondent in fact had 10 paid holidays, but he only offered 8 to Coleman. He did not, however, say eight were all Respondent had. Coleman did not request any information.

On December 5, he and Coleman agreed on the unit description and language concerning the audit clause. Franklin offered to increase rank-and-file wages from $6 to $6.20, plus a 10-cent increase across the board 1 year from the effective date of the contract, which would mean $6.30 for these employees and $6.60 for leadpersons currently paid $6.50. He offered 10 paid holidays, which Coleman rejected. Vacations were agreed on and they agreed to delay instituting them so that former employees of Crystal would be considered new hires by Respondent. Coleman offered to send a letter to the effect vacations would be given 1 year from hire date, but never did. Agreement to split the cost of arbitration was also reached. Franklin never phoned Rebeiro in Coleman's presence and never told Coleman Respondent had no paid vacations. He did not withdraw Respondent's wage offer.

Franklin called Coleman's office on December 21, and canceled the meeting scheduled for December 22 on the ground the decertification petition and three documents submitted to Respondent disavowing union representation and signed by employees in three of the units caused Respondent to doubt the Union's majority status and to withdraw recognition.[4] Coleman responded to Franklin's call by mailgram of December 21, 1988, objecting to the cancellation of the December 22 meeting and requesting a meeting the following week.

Franklin was the more convincing witness of the two, delivering a straightforward, concise, reasonable, and believable account of negotiations which is credited where it differs from that of Coleman. There have been no further negotiation meetings.

Forney credibly testified that on December 20 she received three statements signed by employees at the 565 building, the 575 Technology Square building, and the 21 Osborn Street location, all of which were then delivered to Franklin's office on December 21. The statement from the 565 building employees, dated November 9, 1988, states, ''We the employees of TOP JOB maintenance cleaning co. Do not want a Union,'' and is signed by 22 employees including Barbara Kaufman whose signature is the first on the list. At the bottom of the statement appears ''Signatures Witnessed by B. Kaufman'' in Kaufman's handwriting, as is the quoted language rejecting the Union.[5] The document from 575 Technology Square, dated October 28, 1988, reads ''We the following people that work at 575 Technology Square as cleaners for Top Job Company do not want the union in our building,'' is accompanied by a Spanish translation, and bears 16 signatures. The 21 Osborn Street document, dated November 4, 1988, states, ''The employees at 21 Osborn Street employed by Top Job maintenance cleaning Co. Do not want a union. Thank you.'' and bears seven signatures.

Coleman had sent a mailgram to Respondent on December 6, 1988, reading, in relevant part:

> UNION REQUESTS THE FOLLOWING INFORMATION SOON AS POSSIBLE FOR YOUR EMPLOYEES;
>
> NAMES, DATES OF HIRE, HOURLY RATE OF PAY, HOURS OF WORK, JOB LOCATION, ADDRESS, PAID HOLIDAYS.
>
> PLEASE ADVISE. IF I DO NOT HEAR FROM YOU WITHIN 48 HOURS I WILL ASSUME YOU DECLINED THIS REQUEST.

[4] I do not credit Coleman's testimony that he received no notice of the withdrawal of recognition until Respondent filed its answers to the complaints in this proceeding.

[5] See Fed.R.Evid. 901(b)(3) with respect to authentication of writings by the trier of fact.

By letter to Coleman dated December 20, 1988, Forney advised the requested information was enclosed, and Coleman should contact Respondent if additional information was needed. Coleman testifies, and I conclude that he received the letter on January 11, 1989. It lists 10 paid holidays, the vacation policy, overtime pay rate, jury duty pay, and bereavement leave. Coleman received further information from Forney on January 23, 1989, listing the employees, their work location, their rates of pay, dates of hire, and some but not all employee addresses.

Coleman sent the following request to Respondent on March 31, 1989. It was received on April 3, 1989:

> The Union requests the following information concerning all your employees employed at 575 Tec Sq. from June 1988 through March 31, 1989.
>
> 1. Hours of work on a weekly basis
> 2. Hours of work on a daily basis
> 3. Gross earnings for each employee on a weekly basis
> 4. Holiday pay for each employee on a weekly basis
> 5. Time and Attendance records including but not limited to time cards and or sign in sheets to verify the above information.
> 6. Payroll records to verify the time and attendance records.
> 7. Cancelled employee checks to verify all payroll records provided.

Respondent made no reply.

B. *The Allegations*

1. The decertification effort

Barbara Kaufman filed the petition in Case 1–RD–1583 on December 5, 1988, seeking to decertify the Union as the collective-bargaining representative of Respondent's employees at all four locations involved. She also prepared the document signed by the 565 building employees, witnessed their signatures, and, I conclude, probably solicited those signatures. Kaufman was a supervisor of the employer within the meaning of Section 2(11) of the Act at the time and thus an agent for whose conduct Respondent is responsible.[6] It is well settled that an employer violates Section 8(a)(5) and (1) of the Act when its supervisor who is not a member of the bargaining unit solicits employee signatures to a document seeking to deauthorize a union as a collective-bargaining representative, and further violates those sections of the Act when the supervisor files a decertification petition with the Board based on those signatures.[7] The charge filed in Case 1–CA–25989–1 on December 9, 1988, specifically alleges the circulation and filing of a decertification petition violated Section 8(a)(5), (1), and (3) of the Act. This charge was amended on January 17, 1989, to allege inter alia, Respondent violated Section 8(a)(1) and (5) by sponsoring a decertification petition. General Counsel has elected however to allege and argue the circulation and filing of the petition as a violation of Section 8(a)(1) only. It is the General Counsel's statutory prerogative to allege that which he will, but the relevant facts have been litigated and it is well settled that the Board may in such circumstances find a violation not alleged in the complaint. *Gulf & Western Mfg. Co*., 286 NLRB 1122, 1124–1125 fn. 8 (1987); *Southwire Co*., 282 NLRB 916, 918 fn. 12 (1987). I therefore conclude and find by Kaufman's preparation and circulation of the 565 building document, her solicitation and witnessing of employee signatures thereto, and the filing of the decertification petition with the Board, Respondent committed violations of Section 8(a)(5) and (1) of the Act.

2. Withdrawal of recognition

Respondent withdrew recognition and canceled future negotiations on December 21, 1988. Respondent contends the decertification petition and the employee signatures to the three documents previously referred to gave rise to a good-faith reasonable doubt of the Union's majority status when recognition was withdrawn and the refusal to bargain was initiated. Respondent adds that the same evidence rebutted any presumption the Union had majority support. General Counsel's view is that the withdrawal of recognition was premature, the refusal to meet and bargain was therefore unlawful, and, alternatively, even if a reasonable time for bargaining had passed the withdrawal of recognition and refusal to further meet and bargain was not supported by a good-faith reasonable doubt of the Union's majority status.

The Board has recently succinctly summarized the rule applicable to this case in *Chambersburg County Market*, 294 NLRB 654 (1989), as follows:

> The Board has consistently held that where . . . an employer has voluntarily extended recognition to a union, the union is entitled to an irrebuttable presumption of majority status until a reasonable time for bargaining has elapsed. After that point the union enjoys a rebuttable presumption of majority status. This presumption can be rebutted by an employer's showing that at the time of the refusal to bargain the union did not have majority status in fact, or that the employer had a good-faith doubt of the union's majority status based on objective considerations.
>
> Normally, the Board makes a threshold finding about whether a reasonable time for bargaining has passed before determining whether an employer's evidence could support a good-faith doubt regarding the union's majority status or a finding of no majority in fact. [Footnotes omitted.]

The Respondent does not claim, and there is no evidence that the Union did not have a majority at the time of recognition. See, e.g., *Tri-City Meats, Inc*., 231 NLRB 768 fn. 2 (1977); *Moisi & Son Trucking*, 197 NLRB 198 fn. 2 (1972). The fact that Coleman and Franklin checked the roster of Respondent's employees against that of Crystal's employees who were covered by a union contract is persuasive evidence the parties did verify the Union's majority status on October 18, 1988.

Consistent with the Board's instruction in *Chambersburg County Market*, the determination of whether a reasonable time for bargaining had elapsed when Respondent withdrew

[6] See, e.g., *NLRB v. Elliott Williams Co*., 345 F.2d 460 (7th Cir. 1965), enfg. 143 NLRB 811 (1963).

[7] *Suburban Homes Corp*., 173 NLRB 497 (1968); *Wahoo Packing Co*., 161 NLRB 174 (1966).

recognition is in order. The answer depends not on the mere passage of time but must emerge from a careful consideration of what happened and what was accomplished at the bargaining meetings. *Brennan's Cadillac*, 231 NLRB 225, 226 (1977). Coleman and Franklin met four times between October 18 and December 5, 1988. Other meetings scheduled on November 11 and 18 were canceled at Franklin's request. As previously noted, the meeting scheduled on December 22 was canceled when recognition was withdrawn on December 21. The parties were in the midst of negotiations with some questions resolved, a future meeting set, and reasonable prospects of soon concluding an agreement. There was no impasse nor any indication one was probable. It does not seem to the undersigned it can fairly be said on this record that the parties have been given a reasonable time within which to successfully conclude an agreement when all signs as of December 5, 1988, seem to point toward such a conclusion in the near future. I find it inconceivable that approximately 1-1/2 months within which two meetings were canceled by Franklin for health reasons could in the circumstances of this case be found a reasonable time for bargaining an initial agreement. That being the case, Respondent was not privileged to withdraw recognition on December 21, 1988, and thereafter refuse to bargain because the Union then enjoyed an irrebuttable presumption of majority status. Accordingly, the withdrawal of recognition and refusal to bargain violated Section 8(a)(5) and (1) of the Act. *Chambersburg County Market*, supra; *Van Ben Industries*, 285 NLRB 77 (1987).

The foregoing conclusion, if adopted by the Board, makes it unnecessary to determine if Respondent entertained a good-faith doubt of the Union's majority. If, however, the Board should conclude there has been a reasonable time for bargaining, the question of good-faith reasonable doubt is important. Respondent relies on the decertification petition and the three documents purportedly signed by employees as its basis for such a reasonable doubt. Respondent may not, however, rely on the signatures secured by Kaufman at the 565 building nor the filing of the decertification petition because it is responsible for the conduct of its supervisor and agent which violated the Act. *Colonna's Shipyard*, 293 NLRB 136 (1989), enfd. mem. 900 F.2d 250 (4th Cir. 1990) (per curiam); *Franks Bros. Co. v. NLRB*, 321 U.S. 702 (1944). Excluding the 565 building signatures, which appear genuine from a comparison with the signatures on the sign-in logs placed in evidence by General Counsel, no similar evidence was proffered or adduced to prove the authenticity of the signatures on the 575 Technology Square and 21 Osborn Street submission. These latter two documents, Respondent's Exhibits 1 and 2, were received in evidence, without objection, on the testimony of Forney that they were submitted to her bearing the names thereon. She did not testify the signatures were authentic. There was no effort by Respondent or General Counsel to limit the purposes for which these documents were offered. I therefore conclude that even though the documents do not on their face prove the authenticity of the signatures they contain and they therefore are to that extent hearsay, it is unobjected to and therefore undisputed hearsay that may be relied on. *Plumbers Local 589 (L & S Plumbing)*, 294 NLRB 616 (1989); *RJR Communications*, 248 NLRB 920, 921 (1980).

General Counsel correctly asserts that Respondent has produced no evidence the signatures represented a majority of the employees at the three locations on December 21, 1988, when Respondent withdrew recognition. It is incumbent on Respondent to prove by objective evidence this majority on which it relies existed. *Terrell Machine Co. v. NLRB*, 427 F.2d 1088, 1090 (4th Cir. 1970), cert. denied 398 U.S. 929 (1970). Respondent has not done so. Although there is sufficient evidence to show a loss of majority at the 565 building if that showing were not tainted, as I have found it is, Respondent has not proved a majority of the employees at the 575 and Osborn Street locations rejected the Union on or about December 21, 1988. The ''petitions'' from those locations were dated October 28 and November 4 respectively, long before December 21, as is the ''petition'' for the 565 building. Absent some showing the signers still maintained the same view vis-a-vis union representation on December 21 as they had more than a month earlier, and were a majority of the employees at their respective locations on December 21, I am not persuaded Respondent's asserted doubt was reasonably based. See *Hollaender Mfg. Co*., 299 NLRB 466 fn. 1 (1990). Moreover, there is no evidence at all warranting Respondent's withdrawal of recognition concerning the bargaining unit at 38 Henry Street.

Summarizing, Respondent violated Section 8(a)(5) and (1) of the Act by (1) withdrawing recognition and refusing to bargain before a reasonable time for bargaining had elapsed, and (2) withdrawing recognition and refusing to bargain with the Union in the absence of a good-faith reasonable doubt of the Union's majority status.

3. The reduction of hours

The complaint alleges a reduction of hours on or about January 3, 1989, at the 575 Technology Square location without prior notice or opportunity to bargain on the effects of this reduction being given to the Union. Respondent contends this allegation is time-barred, arguing as follows:

> In this instance, the Union filed its original charge on March 27, 1989. The original charge alleged that Top Job had unlawfully reduced the number of hours of its employees at 575 Technology Square, Cambridge, Massachusetts, since on or about January 3, 1989. On September 11, 1989, the Union filed an Amended Charge that was a verbatim repetition of the orginal charge. Finally, on October 20, 1989, the Union once again amended the charge to claim that Tob Job had failed to give notice of or bargain over the effects of a reduction of hours of employees working at 575 Technology Square. Clearly, the second amended charge was not filed within the six month statute of limitations. In order for this claim to be actionable, this Board must construe the charge to be an amendment to the charge filed on March 27, 1989. A ''[c]omplaint may be amended to include charges which either relate to or define charges set forth in original complaint,'' *NLRB v. Gaynor News Co*., 347 U.S. 17 (1954). In our case, the amended charge neither relates to nor defines charges set forth in the original complaint filed on March 27, 1989. Therefore, 1–CA–26261 should be dismissed for failure to meet the requirements of the applicable statute for limitations, namely, § 10(b) of the Act.

Respondent's facts are correct, but Respondent's conclusion is faulty. The allegation in the second amended charge filed on October 20, 1989, in Case 1–CA–26261 that ''On or about January 3, 1989, the above-named Employer failed to give notice of or bargain over the effects of a reduction of the hours of employees at 575 Technology Square, Cambridge, MA'' is closely related to the allegation in both the original charge of March 27 and the amended charge of September 11, 1989, that Respondent ''unlawfully reduced the hours of work of its employees since on or about Jan. 3, 1989 at 575 Tec Sq.'' I therefore conclude and find the complaint allegation is not time-barred. *Concord Metal*, 295 NLRB 912 fn. 2 (1989).

Respondent further urges that the reduction of hours and its effects are not mandatory subjects of bargaining. Hours of employment are mandatory subjects of bargaining, and a unilateral change in employment hours without giving the incumbent union prior notification and opportunity to bargain with respect to the changes violates Section 8(a)(5) of the Act. See, e.g., *Venture Packaging*, 294 NLRB 544 (1989); *Nemacolin Country Club*, 291 NLRB 456 (1988).

In the instant case Polaroid succeeded to the management of 575 Technology Square in November 1988, apparently on or shortly before November 8, 1988, because on that date Polaroid issued a change order to Respondent. The change order provided for a 3-1/2 workday for 17 persons and 4 hours for 1 person at 575 Technology Square. I conclude the one person was probably the leadperson. This schedule was not implemented until January 1989. Until the date of the change, unit employees worked 4 hours a day, according to James Doherty, the administrator of contract services for Polaroid. Respondent never notified the Union of the change in work hours, or gave it any opportunity to bargain on the effects. The complaint, as amended, does not allege the actual institution of the change as a violation of the Act. The change was mandated by Polaroid, not Respondent who was required to implement it. It seems obvious to me that Respondent had no control over the schedule change, and therefore could not meaningfully bargain on the change itself. It was, however, free to bargain with respect to any other changes in the employees' work situation which may have resulted from the reduction of hours. There may have been no such changes, but the Union, as the employees' recognized representative, was entitled to timely notice of the reduction so that it might properly engage in negotiations with Respondent to ascertain what effects the reduction of hours had in terms of related working conditions. I conclude Respondent violated Section 8(a)(5) and (1) of the Act by failing to notify the Union of the reduction in hours and thereby afford it an opportunity to investigate the effects of the reduction and negotiate thereon if such negotiations appeared appropriate.[8]

4. The alleged failure to provide requested information

The contention that Franklin failed on October 18, 1988, to provide accurate information on rates of pay, paid holidays, and unpaid vacations is without merit. Coleman requested no information, and Franklin did not provide any inaccurate information. The Union did, however, request information in writing on December 6, 1988, and March 31, 1989. These requests are set forth in detail in the ''General Chronology'' section of this decision. The information requested related to wages, hours, and other terms and conditions of employment and was, on both occasions, presumptively relevant and reasonably necessary to the Union in the performance of its duties as the representative of the employees in the bargaining units with which we are here concerned, and must be produced. *Colonna's Shipyard*, 293 NLRB 136 (1989), and cases cited therein; and see discussion in *Pfizer, Inc.*, 268 NLRB 916, 918 (1984). The failure of Respondent to respond to the March 31, 1989 request therefore violated Section 8(a)(5) and (1) of the Act. Respondent had earlier furnished some, but not all, the information requested on December 8, 1988, and the failure to furnish all the information then requested, as well as delay in furnishing that which it did supply to the Union, which delay has not been shown to have been unavoidable, violated Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By seeking to decertify the Union as the exclusive representative of its employees in the bargaining units hereinabove found appropriate in order to avoid its bargaining obligation, Respondent violated Section 8(a)(5) and (1) of the Act.

4. By withdrawing recognition of the Union as the exclusive bargaining representative of its employees and refusing to continue to bargain with the Union before a reasonable time for bargaining had elapsed and at a time Respondent did not have a good-faith reasonable doubt of the Union's majority status, Respondent violated Section 8(a)(5) and (1) of the Act.

5. By failing to give the Union prior notice of and an opportunity to bargain on the effects of a reduction in working hours, Respondent violated Section 8(a)(5) and (1) of the Act.

6. By failing to furnish the Union with information it requested on December 8, 1988, and March 31, 1989, which is relevant and reasonably necessary to the Union in the performance of its duties as the exclusive collective-bargaining representative of certain of Respondent's employees, Respondent has violated Section 8(a)(5) and (1) of the Act.

7. The unfair labor practices set forth above affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

In addition to the usual cease and desist order and notice posting requirements, my recommended Order will require Respondent to (1) bargain with the Union on request, and reduce any understanding reached to a written, signed agreement, (2) furnish the Union with the information requested on December 8, 1988, and March 31, 1989, and (3) make employees at 575 Technology Square whole for moneys and benefits lost, if any, as a result of Respondent's failure to notify and give the Union opportunity to bargain on the effects of the January 1989 reduction of work hours, with interest

[8] There is nothing of record to show whether or not there were any effects of the reduction in hours warranting negotiation.

computed thereon at the ''short-term Federal rate'' for the underpayment of taxes as set out in the 1989 amendment to 26 U.S.C. § 6621 in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[9]

ORDER

The Respondent, Top Job Building Maintenance Co., New Bedford, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize and bargain with the Union as the exclusive bargaining representative of the employees in the following bargaining units:

> All employees who regularly work in excess of 15 hours per week engaged in the contract building cleaning industry at Respondent's 565 Technology Square, Cambridge, Massachusetts location, including all janitors, porters, cleaners, doormen, elevator operators, starters, handymen, groundsmen and maintenance tradesmen not represented by another union, but excluding sales employees, office clerical employees, foremen and all other supervisors as defined in the Act.
>
> All employees who regularly work in excess of 15 hours per week engaged in the contract building cleaning industry at Respondent's 575 Technology Square, Cambridge, Massachusetts location, including all janitors, porters, cleaners, doormen, elevator operators, starters, handymen, groundsmen and maintenance tradesmen not represented by another union, but excluding sales employees, office clerical employees, foremen and all other supervisors as defined in the Act.
>
> All employees who regularly work in excess of 15 hours per week engaged in the contract building cleaning industry at Respondent's 38 Henry Street, Cambridge, Massachusetts location, including all janitors, porters, cleaners, doormen, elevator operators, starters, handymen, groundsmen and maintenance tradesmen not represented by another union, but excluding sales employees, office clerical employees, foremen and all other supervisors as defined in the Act.
>
> All employees who regularly work in excess of 15 hours per week engaged in the contract building cleaning industry at Respondent's 21 Osborn Street, Cambridge, Massachusetts location, including all janitors, porters, cleaners, doormen, elevator operators, starters, handymen, groundsmen and maintenance tradesmen not represented by another union, but excluding sales employees, office clerical employees, foremen and all other supervisors as defined in the Act.

(b) Seeking to decertify the Union as the exclusive representative of its employees in order to avoid its bargaining obligation.

(c) Failing to furnish the Union with information it requests that is relevant and reasonably necessary to fulfilling its duty to represent the employees in the units described above.

(d) Failing to give the Union prior notice of and an opportunity to bargain on the effects of changes in hours of work.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, recognize and bargain with the Union as the exclusive representative of all employees in the above-described appropriate units and, if an understanding is reached, embody such understanding in a written signed agreement.

(b) Immediately furnish the Union with the information it requested by letters of December 8, 1988, and March 31, 1989.

(c) Make the employees in the appropriate unit at 575 Technology Square whole for any moneys or benefits lost as a result of Respondent's failure to notify and give the Union opportunity to bargain on the effects of the reduction of the daily work hours from 4 to 3-1/2 in January 1989, with interest thereon computed in the manner set forth in the remedy section of this decision.

(d) Preserve and, on reasonable request, make available to the Board and its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of moneys due under the terms of this Order.

(e) Post at its New Bedford, Massachusetts offices and facilities, and the four locations in Cambridge, Massachusetts, involved here, copies of the attached notice marked ''Appendix.''[10] Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by Respondent's authorized agent, shall be posted by it immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that these notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent has taken to comply.

[9] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[10] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''